IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 50 OF 2005

Smt.Anusuyabai Vishnu Phadatare. ... Appellant.

Versus.

Tukaram Deoji Bhavar & anr. ... Respondents.

Shri Nitin Apte i/by Smt.Veena Rohirkar for the Appellant.

CORAM : ABHAY S. OKA, J.

DATED : 27th January, 2005.

P.C.:

1. The Appellant and the Respondent No.2 are the married daughters of the Respondent No.1. Admittedly the suit land is ancestral land in the hands of the Respondent No.1-father. On the basis of the Application made to the Revenue Authorities allegedly signed by the Respondent No.1, the names of the Appellant and the Respondent No.2 were mutated in the Revenue records.

2. The Respondent No.1-father filed a suit for declaration of ownership and for perpetual injunction. The suit is decreed by the trial Court and the decree of the trial Court has been confirmed in Appeal.

3. The learned Counsel appearing for the Appellant submitted that the Appellate Court has recorded a finding that the Appellant and the Respondent No.2 were in possession of the suit land. The learned Counsel

therefore submitted that the decree of the trial Court which proceeds on an erroneous assumption that the Respondent No.1 is in possession is required to be set aside. He submitted that even assuming without admitting that the Appellant has no title,the statement of the Respondent No.1 before the Revenue authorities will have to be construed as a grant of licence in favour of the Appellant and the Respondent No.2 and acting upon the said licence, the Appellant has constructed a well on the suit land and the licence has thus become irrevocable.

4. In so far as the first contention is concerned, it is pertinent to note that the Appellate Court has not specifically overturned the finding of the trial Court recorded on the issue No.1. When the Appellant and the Respondent No.2 have no right, title and interest in respect of the suit land during the life time of the Respondent No.1, it is very difficult to accept the contention of the Appellant that they were in possession of the suit land on the date of institution of the suit. The finding recorded by the Appellate Court in paragraph 19 cannot be construed as a finding that the Appellant and the Respondent No.2 were in possession of the suit land on the date of institution of the suit. The Respondent No.1 has established his right to be in possession of the suit land. There is no merit in the first submission.

5. In so far as the second submission is concerned, it is necessary to refer to the written statement filed by the Appellant. The Appellant claimed title in respect of the property. A specific contention on the basis of section 60(b) of the Easements Act is not raised in the pleadings. Hence the second contention raised by the learned Counsel for the Appellant has no merit.

6. No substantial question of law arises in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.